

**United States**  
**Department of the Interior**  
**Bureau of Land Management**

*Miles City Field Office*

**Highland Access Road**  
**ROW MTM-105898**

Categorical Exclusion (CX)  
DOI-BLM-MT-C020-2013-0144-CX

*For Further Information Please Contact:*

Bureau of Land Management  
Miles City Field Office  
111 Garryowen Road  
Miles City, Montana 59301  
406-233-2800

BLM



UNITED STATES DEPARTMENT OF INTERIOR  
BUREAU OF LAND MANAGEMENT  
*Miles City Field Office*  
*111 Garryowen Road*  
*Miles City, Montana 59301*

**CATEGORICAL EXCLUSION REVIEW AND APPROVAL**

**A. Background**

BLM Office: Miles City Field Office

Serial/Case File No.: MTM-105898

NEPA Number (if applicable): DOI-BLM-MT-C020-2013-0144-CX

Proposed Action Title/Type: Highland Access Road Right-of-way MTM-105898

Location of Proposed Action (w/county):

T. 14 N., R. 32 E., Section 4: Lot 4 and SW $\frac{1}{4}$ SW $\frac{1}{4}$ , Garfield County, Montana, PMM

Description of Proposed Action: The proposed action is to issue an access road right-of-way (ROW) to Elva Highland to operate, maintain, and terminate an existing road located across two parcels of Federal land (PD Land). There is an existing right-of-way already authorized on this road. It is MTM-102451 and it is issued to Cirque Resources, LP. This road is an RS 2477 road and a gas tax road to Garfield County and they maintain the road.

This road is an improved, gravel road and the right-of-way is 60 feet wide, 2,704 feet long, and consists of 3.72 acres, more or less. The existing road would be maintained and reconstructed if necessary within their authorized 60-foot ROW in conformance with the Gold Book and BLM Manual 9113 Roads which have been provided to the Elva Highland. Any work outside the 60-foot ROW or major up-grading would require amended or new ROW grant. No hazardous material would be used, produced, or stored in connection with the proposed ROW. The ROW would be issued for a term of 30 years and be renewable. The road is shown in the attached map.

The standard stipulations for cultural and/or paleontological resource protection and hazardous material stipulation would be made a part of the ROW grant, as would the standard Civil Rights stipulation and standard stipulation that all activities associated with the ROW would be conducted within the authorized limits of the grants. Fences, gates, culverts, cattleguards, and brace panels shall be reconstructed, if necessary, to appropriate Bureau standards and/or specifications as determined by the authorized officer and all operation, maintenance, reconstruction, design, material, and termination practices shall be in accordance with safe and proven engineering practices. The applicant would be responsible for weed control on disturbed areas within the limits of the ROW and for coordinating with parties holding authorized rights on the adjacent and affected lands such as the grazing permittee/lessee and other ROW holders. Ninety days prior to termination of the ROW, the holder shall contact the authorized officer to

arrange a joint inspection of the ROW and to agree on an acceptable termination (and rehabilitation) plan. The ROW would be granted pursuant to Title V of the Federal Land Policy and Management Act of October 21, 1976 (90Stat. 2776; 43 U.S.C. 1761) and be subject to the terms and conditions in 43 CFR 2800 and to the attached stipulations. Elva Highland is responsible for paying a processing fee, and monitoring fee, and a rental fee. The ROW would be monitored for use and before renewal or closure.

## B. Land Use Plan Conformance

Land Use Plan Name: Big Dry R. A. RMP/EIS ROD

Date Approved/Amended: Approved in April of 1996

The proposed action is in conformance with the applicable LUP because it is specifically provided for in the following LUP decision(s): This proposed action is in conformance with the Big Dry Resource Area RMP/EIS ROD which was approved in April of 1996. On page 10 of the Record of Decision, it states that "In areas where rights-of-way are allowed, stipulations from the BLM Manual 2800 will be used to protect resource values." The proposed action has been reviewed for conformance with this plan and its terms and conditions as required by 43 CFR 1610.5

## C: Compliance with NEPA:

The Proposed Action is categorically excluded from further documentation under the National Environmental Policy Act (NEPA) in accordance with 516 DM 11.9E (16) for issuance of rights-of-way for the use of existing facilities, improvements, or sites for the same or similar purposes.

This categorical exclusion is appropriate in this situation because there are no extraordinary circumstances potentially having effects that may significantly affect the environment. The proposed action has been reviewed, and, as documented below, none of the extraordinary circumstances described in 516 DM2 apply.

Extraordinary Circumstances		
The project would:		
1. Have significant impacts on public health or safety.		
Yes	No	<b>Rationale:</b> <i>The project would not have significant impacts on public health and safety as this is an existing road which is being put under Title V FLPMA Right-of-Way. DDL 5/8/2013</i>
	X	
2. Have significant impacts on such natural resources and unique geographic characteristics as historic or cultural resources; park, recreation or refuge lands; wilderness areas; wild or scenic rivers; national natural landmarks; sole or principal drinking water aquifers; prime farmlands; wetlands (Executive Order 11990); floodplains (Executive Order 11988); national monuments; migratory birds; and other ecologically significant or critical areas.		

<b>Yes</b>	<b>No</b> <b>X</b>	<b>Rationale:</b> <i>Impacts would not be significant as the proposed action is to authorize an existing road under Title V FLPMA rights-of-way. There are no Areas of Critical Environmental Concern, Wilderness Study Areas, Monuments, and other areas with special designation involved with this proposal. The proposed action would not occur in a floodplain or wetland area. The act of authorizing this existing road would not affect migratory birds, as the road is already exists. Cirque Resources, LP already has a right-of-way MTM-102451 on this road. DDL 5/8/2013</i>
3. Have highly controversial environmental effects or involve unresolved conflicts concerning alternative uses of available resources [NEPA section 102 (2) (E)].		
<b>Yes</b>	<b>No</b> <b>X</b>	<b>Rationale:</b> <i>No controversial environmental effects or unresolved conflicts. DDL 5/8/2013</i>
4. Have highly uncertain and potentially significant environmental effects or involve unique or unknown environmental risks.		
<b>Yes</b>	<b>No</b> <b>X</b>	<b>Rationale:</b> <i>No highly uncertain and potentially significant environmental effects or unique or unknown environmental risks. DDL 5/8/2013</i>
5. Establish a precedent for future action or represent a decision in principal about future actions with potentially significant environmental effects.		
<b>Yes</b>	<b>No</b> <b>X</b>	<b>Rationale:</b> <i>This action is not connected to another action that would require further environmental analysis nor will it set a precedent for future actions that would normally require environmental analysis. DDL 5/8/2013</i>
6. Have a direct relationship to other actions with individually insignificant but cumulatively significant environmental effects.		
<b>Yes</b>	<b>No</b> <b>X</b>	<b>Rationale:</b> <i>This action does not have a direct relationship to other actions with individually insignificant but cumulatively significant environmental effects. DDL 5/8/2013</i>
7. Have significant impacts on properties listed, or eligible for listing, on the National Register of Historic Places as determined by either the bureau or office.		
<b>Yes</b>	<b>No</b> <b>X</b>	<p><b>Rationale:</b> <i>Confirm that cultural surveys have been completed; the appropriate data bases have been reviewed; and appropriate concurrence from SHPO and tribes have been received indicating that significant impacts are not expected.</i></p> <p>The BLM lands were inventoried for cultural resources in June 2011. No cultural or paleontological resources were observed in the inventoried areas on Federal lands. The proposed action meets the Waiver of Inventory Criteria found in BLM Montana/Dakotas Cultural Resources Handbook H-8110-1 Section II.C.4 (See BLM Cultural Resources Report MT-020-13-188). The proposed action would have no effect to historic properties and no additional cultural or paleontological work subject to the cultural paleo stipulation in the ROW Grant is recommended.</p> <p><b>DM 05/13/2013</b></p>

8. Have significant impacts on species listed, or proposed to be listed, on the List of Endangered or Threatened Species, or have significant impacts on designated Critical Habitat for these species.		
Yes	No <b>X</b>	<b>Rationale:</b> There is no habitat for threatened, endangered or candidate species in the project area. <b>KU 5/21/13</b>
9. Violate a Federal law, or a State, local or tribal law or requirement imposed for the protection of the environment.		
Yes	No <b>X</b>	<b>Rationale:</b> <i>No laws are being violated by this action. DDL 5/8/2013</i>
10. Have a disproportionately high and adverse effect on low income or minority populations (Executive Order 12898).		
Yes	No <b>X</b>	<b>Rationale:</b> <i>Does not have a disproportionately high and adverse effect on low income or minority populations. DDL 5/8/2013</i>
11. Limit access to and ceremonial use of Indian sacred sites on Federal lands by Indian religious practitioners or significantly adversely affect the physical integrity of such sacred sites (Executive Order 13007).		
Yes	No <b>X</b>	<b>Rationale:</b> <i>Consultation with tribes regarding Indian sacred sites must take place</i> The proposed action is to issue a ROW for existing county road. The ROW would not limit use of public lands. The Ethnographic Overview of Southeast Montana does not identify any areas of concern in the vicinity of the proposed ROW.  DM 05/13/2013
12. Contribute to the introduction, continued existence, or spread of noxious weeds or non-native invasive species known to occur in the area or actions that may promote the introduction, growth, or expansion of the range of such species (Federal Noxious Weed Control Act and Executive Order 13112).		
Yes	No <b>X</b>	<b>Rationale:</b> <i>The proposed action will not contribute to the introduction or spread of noxious weeds as existing roads are being authorized under Title V FLPMA rights-of-way. Further, under the authorizations the applicant is responsible for weed control within the authorized area. DDL 5/8/2013</i>



Signature of Supervisory Land Use Specialist

5/23/2013

Date



Signature of Environmental Coordinator

5/22/2013

Date

Decision Record for Categorical Exclusion  
Highland Access Road Right-of-way MTM-105898  
DOI-BLM-MT-C020-2013-0144-CX

Decision: I have made the decision to issue a Title V FLPMA right-of-way (ROW) to Elva M. Highland to operate, maintain, and terminate the following existing road across Federal land (PD land) located in the following area:

T. 14 N., R. 32 E., Section 4: Lot 4 and SW<sup>1</sup>/<sub>4</sub>SW<sup>1</sup>/<sub>4</sub>, Garfield County, Montana, PMM

The road is shown on the attached map. The ROW will be issued for a term of 30 years and be renewable and will be subject to the attached stipulations.

Rational for Decision: The proposed action meets the criteria for a categorical exclusion under 516 DM 11.9E (16), and none of the exceptions in 516 DM 2 apply. Further the action is in conformance with the Big Dry RMP/EIS, which was approved in April of 1996.

I considered the proposed action and associated stipulations which will be included in the right-of-way and which are attached below. There is no potential for significant impacts. Use of this CX is appropriate and I have decided to implement this action.

**D: Signature**



Date: 05/23/2013

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Signature of Authorizing Official

Name: Todd D. Yeager

Title: Field Manager

**Contact Person**

For additional information concerning this CX review and decision, contact:

Dalice Landers, Realty Specialist  
BLM – Miles City Field Office  
111 Garryowen Road  
Miles City, Montana 59301  
Phone #406-233-2836

## **Administrative Review or Appeal Opportunities**

A BLM decision to issue a ROW may be appealed under regulations in 43 CFR 2801.10 in accordance with part 4 of 43 CFR. A BLM decision affecting a ROW application carries the “full force and effect” of the decision. Under full force and effect the decision can be implemented immediately even if the decision is appealed to the IBLA. An affected party has the opportunity to file a petition for a stay with an appeal to the IBLA. The decision to issue a ROW in full force and effect requires information on petitions for stay to be included with the decision notification. The decision may be appealed to the Interior Board of Land Appeals, Office of the Secretary, in accordance with the regulations contained in 43 CFR, Part 4 and information on BLM Form 1842-1. If an appeal is taken, the notice of appeal must be filed in the Miles City Field Office at 111 Garryowen Road, Miles City, Montana 59301 within 30 days from receipt of the decision issuing the decision. The appellant has the burden of showing that the decision appealed from is in error.

If a petition (request) is filed pursuant to regulation 43 CFR 2881.10 for a stay (suspension) of the effectiveness of the decision during the time that the appeal is being reviewed by the Board, the petition for a stay must accompany the notice of appeal. A petition for a stay is required to show sufficient justification based on the standards listed below. Copies of the notice of appeal and petition for a stay must also be submitted to each party named in the decision and to the Interior Board of Land Appeals and to the appropriate Office of the Solicitor (see 43 CFR 4.413) at the same time the original documents are filed with the Miles City Field Office. If a stay is requested, the requester has the burden of proof to demonstrate that a stay should be granted.

### Standards for Obtaining a Stay

Except as otherwise provided by law or other pertinent regulation, a petition for a stay of a decision pending appeal shall show sufficient justification based on the following standards:

- (1) The relative harm to the parties if the stay is granted or denied,
- (2) The likelihood of the appellant's success on the merits,
- (3) The likelihood of immediate and irreparable harm if the stay is not granted, and
- (4) Whether the public interest favors granting the stay.

## STIPULATIONS

1. Any cultural and/or paleontological resource (historic or prehistoric site or object) discovered by the holder, or any person working on his behalf, on public or Federal land shall be immediately reported to the authorized officer. Holder shall suspend all operations in the immediate area of such discovery until written authorization to proceed is issued by the authorized officer. An evaluation of the discovery will be made by the authorized officer to determine appropriate actions to prevent the loss of significant cultural or scientific values. The holder will be responsible for the cost of evaluation and any decision as to proper mitigation measures will be made by the authorized officer after consulting with the holder.
2. The holder shall be responsible for weed control on disturbed areas within the limits of the right-of-way. The holder is responsible for consultation with the authorized officer and/or local authorities for acceptable weed control methods (within limits imposed in the grant stipulations).
3. No construction or routine maintenance activities shall be performed during periods when the soil is too wet to adequately support construction equipment. If such equipment creates ruts in excess of four (4) inches deep, the soil shall be deemed too wet to adequately support construction equipment.
4. The holder shall conduct all activities associated with the construction, operation, maintenance, and termination of the right-of-way within the authorized limits of the right-of-way.
5. The holder(s) shall comply with all applicable Federal laws and regulations existing or hereafter enacted or promulgated. In any event, the holder(s) shall comply with the Toxic Substances Control Act of 1976, as amended (15 U.S.C. 2601, et. seq.) with regard to any toxic substances that are used, generated by or stored on the right-of-way or on facilities authorized under this right-of-way grant. (See 40 CFR, Part 702-799 and especially, provisions on polychlorinated biphenyls, 40 CFR 761.1-761.193.) Additionally, any release of toxic substances (leaks, spills, etc.) in excess of the reportable quantity established by 40 CFR, Part 117 shall be reported as required by the Comprehensive Environmental Response, Compensation and Liability Act of 1980, Section 102b. A copy of any report required or requested by any Federal agency or State government as a result of a reportable release or spill of any toxic substances shall be furnished to the authorized officer concurrent with the filing of the reports to the involved Federal agency or State government.
6. In the event that the public land underlying the right-of-way (ROW) encompassed in this grant, or a portion thereof, is conveyed out of Federal ownership and administration of the ROW or the land underlying the ROW is not being reserved to the United States in the patent/deed and/or the ROW is not within a ROW corridor being reserved to the United States in the patent/deed, the United States waives any right it has to administer the right-of-way, or portion thereof, within the conveyed land under Federal laws, statutes, and regulations, including the regulations at 43 CFR Part 2800, including any rights to have the holder apply to BLM for amendments, modifications, or assignments and for BLM to approve or recognize



such amendments, modifications, or assignments. At the time of conveyance, the patentee/grantee, and their successors and assigns, shall succeed to the interests of the United States in all matters relating to the right-of-way, or portion thereof, within the conveyed land and shall be subject to applicable State and local government laws, statutes, and ordinances. After conveyance, any disputes concerning compliance with the use and the terms and conditions of the ROW shall be considered a civil matter between the patentee/grantee and the ROW Holder.

7. The holder shall seed all disturbed areas with the seed mixture listed below. The seed mixture shall be planted in the amounts specified in pounds of pure live seed (PLS)/acre. There shall be no primary or secondary noxious weed seed in the seed mixture. Seed shall be tested and the viability testing of seed shall be done in accordance with State law(s) and within six months prior to purchase. Commercial seed shall be either certified or registered seed. The seed mixture container shall be tagged in accordance with State law(s) and available for inspection by the authorized officer.

Seed shall be planted using a drill equipped with a depth regulator to ensure proper depth of planting where drilling is possible. The seed mixture shall be evenly and uniformly planted over the disturbed area. (Smaller/heavier seeds have a tendency to drop to the bottom of the drill and are planted first. The holder shall take appropriate measures to insure this does not occur.) Where drilling is not possible, seed shall be broadcast and the area shall be raked or chained to cover the seed. When broadcasting the seed, the pounds per acre noted below are to be doubled. The seeding will be repeated until a satisfactory stand is established as determined by the authorized officer. Evaluation of growth will not be made before completion of the second growing season after seeding. The authorized officer is to be notified a minimum of seven (7) days prior to seeding of the project.

**Seed Mixture** (silty) - Western wheatgrass must be included in the mix. Thickspike wheatgrass may be substituted only when western wheatgrass is unavailable. The combination for the seed mixture must include at least four of the following species including Western wheatgrass:

<i><b>Species of Seed</b></i>	<i><b>(Variety)</b></i>	<i><b>Common Name</b></i>	<i><b>Pounds/acre *(PLS)</b></i>
<u>Pascopyrum smithii</u>	(Rosanna)	Western wheatgrass	3.00
<u>Pseudoroegneria spicata</u>	(Goldar)	Bluebunch wheatgrass	2.00
<u>Stipa viridula</u>	(Lodom)	Green needlegrass	2.00
<u>Elymus trachycaulus</u>	(Pryor)	Slender wheatgrass	2.00
<u>Stipa comata</u>		Needleandthread	1.00
<u>Bouteloua curtipendula</u>		Sideoats Grama	2.00
<u>Schizachyrium scoparium</u>		Little bluestem	2.00

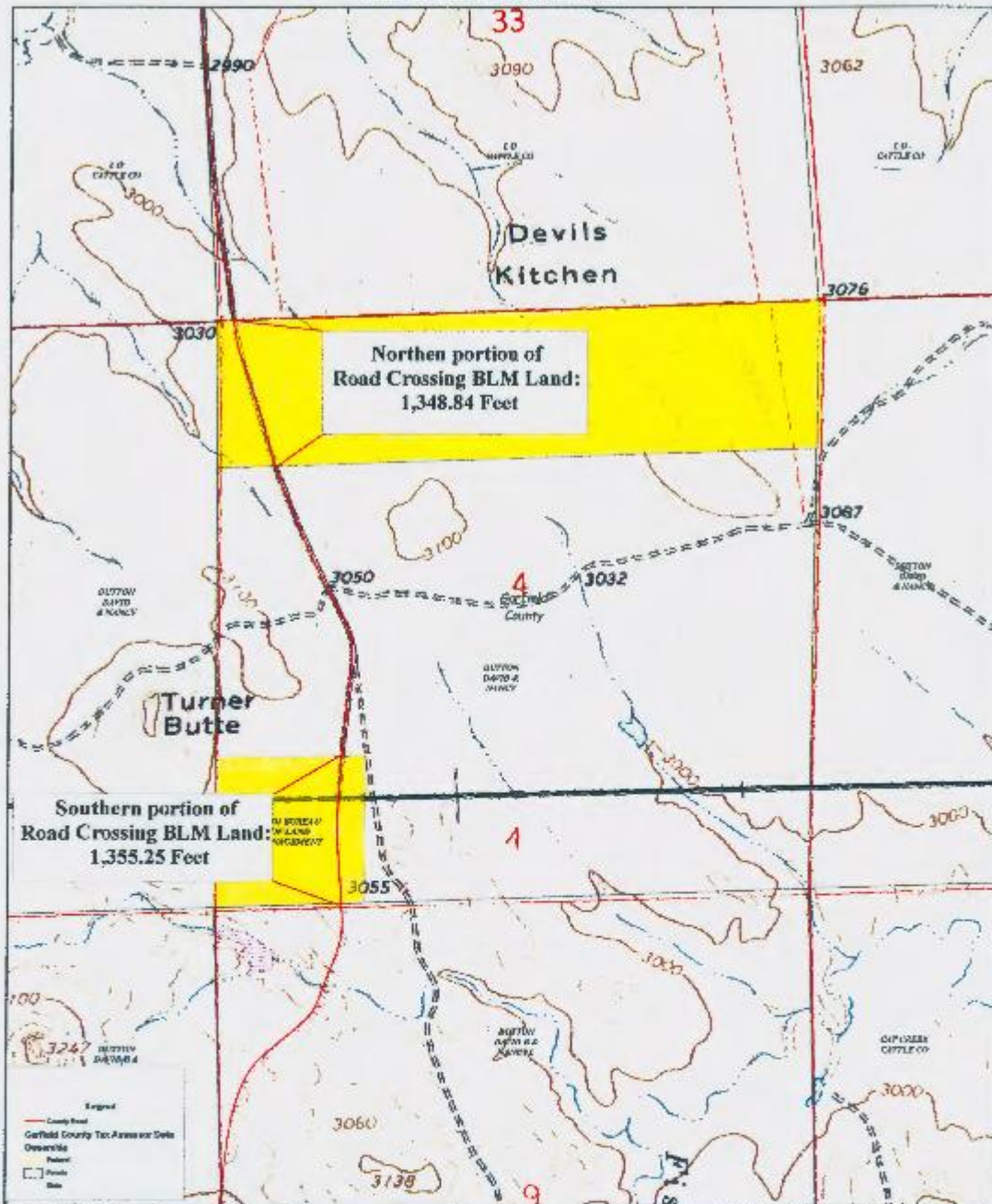
*\*Pure Live Seed (PLS) formula: % of purity of seed mixture times % germination of seed mixture = portion of seed mixture that is PLS.*

8. The holder shall coordinate with the parties holding authorized rights on the adjacent and affected lands (such as the grazing permittee/lessee and other right-of-way holders). *This non-*

*standard stipulation was approved by the District Manager, which is the next higher level of Bureau line management, for right-of-way MTM-83461, on September 28, 1994.*

9. This grant is issued subject to the holder's compliance with the mitigations set forth in the application/plan of development.
10. All operation, maintenance, reconstruction, design, material, and termination practices shall be in accordance with safe and proven engineering practices as stated in BLM Manual 9113 - Road Standards.
11. Fences, gates, culverts, cattleguards, and brace panels shall be reconstructed to appropriate Bureau standards and/or specifications as determined by the authorized officer.
12. The holder of this right-of-way grant or the holder's successor in interest shall comply with Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d et seq.) and the regulations of the Secretary of the Interior issued pursuant thereto.
13. Ninety days prior to termination of the right-of-way, the holder shall contact the authorized officer to arrange a joint inspection of the right-of-way. This inspection will be held to agree on an acceptable termination (and rehabilitation) plan. This plan shall include, but is not limited to, removal of facilities, drainage structures, or surface material, recontouring, topsoiling, and/or seeding. The authorized officer must approve the plan in writing prior to the holder's commencement of any termination activities.

# BLM Right of Way Application



BLM ROW Application  
Garfield County  
Houses



Area of Interest



BLM ROW  
Application  
Garfield County  
Houses